



THE TEXAS HOUSE OF REPRESENTATIVES
COMMITTEE ON URBAN AFFAIRS

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Opinion Committee

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GOVERNMENTAL INQUIRY
UNIT

The Honorable Dan Morales
Texas Attorney General
P.O. Box 12548
Austin, TX 78711-2548

FILE #

I.D. #

ML-39664-97 July 14, 1997

Re: Request for Attorney General Opinion
on behalf of the City of Denton Relating
to Application of Pension Plans

Dear Dan,

The City of Denton again seeks your assistance in obtaining a legal opinion of the from the Opinion Committee. A controversy has arisen in the City of Denton between the application of the Texas Local Fire Fighters Retirement Act (TLFFRA) Vernon's Ann. Civ. St. art. 6243e and the Texas Municipal Retirement System (TMRS) V.T.C.A., Government Code § 852.001 to certain employees designated by the City as Public Safety Dispatchers. Historically, all employees of the City were under TMRS except for sworn firefighters who were under the TLFFRA. In 1989, the TLFFRA was amended by the legislature to define an "employee" as a person who regularly performs services for a fire department. Based on this language, the TLFFRA desires to bring Public Safety Dispatchers (positions that do not require sworn firefighters) who are presently under TMRS within the ambit of the TLFFRA.

The City of Denton uses a public safety dispatch system. Dispatchers spend one half of their shift working for the police department and one half of their shift working for the fire department. Dispatchers split their time equally between the two departments, however, the majority of calls handled are police related. About one third of the dispatchers are in the fire department budget. The other two thirds are in the police department budget. Fire department employees are covered under TLFFRA, all other city employees are under TMRS. The City feels the dispatchers should be under TMRS. The fire pension board feels the dispatchers should be under TLFFRA, since they spend a substantial amount of their time doing fire department related work. Both sides concede that the law is unclear.

With this background, the City would like you to provide and Attorney General's Opinion on the following question:

SHOULD DISPATCHERS BE COVERED UNDER TMRS OR TLFFRA?

The Attorney General's Opinion may be impacted by §3(c) of Article 6243 which states, "If a municipality's fire department consists partly of employees participating in the TMRS and partly of employees not participating in the TMRS, this Act applies to the persons who are not participating in TMRS." However, this section may not be referring to action of the City's governing body but

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Kevin Bailey, Vice Chairman

MEMBERS:

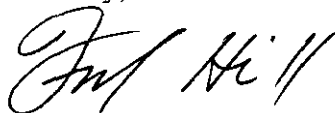
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may be referring to §9(c) (3) of Article 6243e which states, "A board of trustees ... may ... exclude from membership categories of fire department personnel not regularly directly engaged in the fighting of fires."

Lastly, does the City's Home Rule status under the Home Rule Amendment to the Constitution of Texas (Article XI, Section 5) and the Home Rule Enabling Act (Chapter 13, Title 28 of the Revised Civil Statutes of the State of Texas) allow the City Council to elect which retirement system its employees are under when there is a conflict between two state statutes relating to two separate retirement systems?

The City Council and the Board of Trustees of TLFFRA would be most appreciative if the Attorney General could resolve this matter so that costly litigation and negative employee moral could be avoided. I appreciate your cooperation in this matter. Please contact me if I can provide any assistance to you. Should the Opinion Committee desire to receive input from the Board of Trustees of TLFFRA, its mailing address is to the attention of: Mr. John Steger; P.O. Box 2375; Denton, TX 76202.

Sincerely,

A handwritten signature in black ink, appearing to read "Fred Hill", written in a cursive style.

Fred Hill
FH/dmo/c

cc: Ted Benavides, City Manager
Michael Jez, Executive Director of Public Safety
Ross Chadwick, Fire Chief
John Steger, Chairman, Board of Trustees, TLFFRA
Hon. Burt R. Solomons